IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE

CRIMINAL APPEAL NO. 338 OF 2003

Date of Decision : December 6, 2007.

For Approval and Signature :

The Ho'ble Mr. Justice R.M.S.Khandeparkar :

The Hon'ble Mr. Justice A.A. Sayed :

1. Whether Reporters of Local Papers may be allowed to see the Judgment?

2. To be referred to the Reporters or not?

3. Whether Their Lordships wish to see the fair copy of the Judgment?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950, or any Order made thereunder?

5. Whether it is to be circulated to the Civil Judges ?

6. Whether the case involves an important question of law and whether a copy of the Judgment should be sent to Nagpur, Goa and Aurangabad office?

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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 338 OF 2003

SHRI RAJENDRA YESHWANT KADAM]
ADULT, RESIDING AT PRAMUKH]
PALACE, ROOM NO. 502, 5TH FLOOR]
NEAR JAYRAJ NAGAR, LINK ROAD] APPELLANT/
BORIVALI(WEST),MUMBAI 400 091] ...ACCUSED.

VERSUS.

THE STATE OF MAHARASHTRA]
AT THE INSTANCE OF BORIVALI]
POLICE STN., MUMBAI.] ...RESPONDENTS.

MR. K.S.PATIL ADVOCATE FOR THE APPELLANT.

MR. F.R.SHAIKH APP FOR THE STATE.

CORAM : Sri R.M.S.Khandeparkar

And

Sri A.A.Sayed,JJ.

DATE : December 6, 2007.

ORAL JUDGMENT [PER R.M.S.KHANDEPARKAR, J.].

1. Heard the advocate for the appellant and the learned APP for the State.

2. This Appeal arises from the Judgment, dated 14th

January, 2003, passed in Sessions Case No. 252 of 1999 by the Additional Sessions Judge at Mumbai, convicting the appellant of the offence punishable under Section 302 of the Indian Penal Code and sentenced him to suffer imprisonment for life and further to pay a fine of Rs. 5,000/-(Rupees five thousand only), in default, rigorous imprisonment for one year.

3. The facts relevant for the decision in this Appeal are that on 17th October, 1998, PSI Rane at Borivali Police Station received a telephone call from PSI Hatkar about some untoward incident had taken place at the residence of Sub Inspector Mr. Kadam, the appellant herein. Pursuant to which Mr. Rane visited the house of Mr.Kadam, the appellant- accused and found that there were two dead bodies of female persons in the house of Mr.Kadam. Thereupon FIR came to be lodged and investigation commenced. On completion of the investigation charge-sheet came to be filed and pursuant to the committal of the case to the Court of Sessions on 11th of February, 1999, the prosecution led its evidence consisting of seven witnesses and in answer the appellant-acused examined three witnesses. On analysis of the evidence on record, the learned Additional Sessions Judge convicted the appellant-accused of the offence under Section 302 of the Indian Penal Code and sentenced him to suffer life imprisonment and to pay a fine of Rs. 5,000/- (Rupees five thousand only), in default, RI for one year.

4. An attempt was made to seek leave of the Court to lead additional evidence by invoking the provisions of law comprised under Section 391 of the Code of Criminal Procedure, however the application has been dismissed by order dated 5th December, 2004.

5. The learned Advocate appearing for the appellant has taken us through the evidence recorded on behalf of the prosecution as well as the defence, and submitted that the appellant-accused had specifically raised the plea of 'insanity' in terms of Section 84 of the Indian Penal Code and, accordingly, had led necessary evidence to establish that the act complained of was committed while the appellant-accused was not in a condition to know the consequences of his acts as he was suffering from chronic paranoid psychosis. Referring to the medical evidence on record, including the testimony of D.W.2 Dr. Mrs. Patil, he submitted that witness has specifically stated that when the accused was subjected to medical examination by a Committee of the Doctors, who had examined him, clearly certified that in the month of October, 1998 the appellant was suffering from chronic paranoid psychosis. Dr. Mrs. Patil has confirmed the handwriting and the signatures of the doctors, who have prepared the report and signed the same in reference to the medical examination of the appellant-accused and submitted that the testimony of Dr.Mrs. Patil in that regard could not have been discarded solely on the ground that the testimony of one

of the doctors who had examined the appellant-accused and had prepared the report is not available on record. It is also submitted on behalf of the appellant-accused that nothing prevented the Sessions Court from calling one of such doctors who had examined the appellant and prepared the report under summons, in case, there was any doubt about the said medical evidence regarding the illness from which the appellant was suffering at the relevant time. While fairly conceding that it was duty of the appellant-accused to prove the plea of insanity, the learned advocate for the appellant-accused submitted that though the evidence produced by the appellant on record sufficiently establish the fact of insanity, the Sessions Judge having totally discarded the same for unsustainable reasons and therefore the impugned Judgment needs to be set aside and the appellant needs to be acquitted.

6. The learned APP on the other hand submitted that the Sessions Judge, on detail analysis of the evidence on record has arrived at a clear finding that the appellant-accused failed to established the plea of 'insanity' and the said finding is clearly borne out from the record. He further submitted that as there was complete failure on the part of the appellant-accused in placing on record the testimony of one of the doctors who had examined him at the relevant time to establish the plea of insanity raised by him. He cannot be allowed to take benefit of his own lapses in that regard

by expecting the Sessions Court to exercise suo motu powers to summon the doctor to be examined in Court to ascertain about the plea of insanity raised by the appellant. He further submitted that the appellant himself had pleaded guilty to the charge, however, in the interest of justice, an opportunity was given to the appellant by the Sessions Judge to prove his innocence, if any, in the matter and he having failed to establish the same and even specific plea raised by him of insanity being not established, no fault can be found with the impugned Judgment.

7. The records clearly disclose that charge for committing an offence under Section 302, for murder of his wife as well as his mother-in-law was framed against the appellant-accused alongwith the charge relating to possession of service Pistol and ammunitions for unlawful purpose i.e. to commit the murder of the said two ladies being punishable under Section 27 of the Indian Arms Act, 1959. It was framed on 26th September, 2001, pursuant to which the plea of the appellant was recorded. To the question as to whether he pleads guilty to the charge, the answer of the appellant-accused was that " I admit that I have committed murder of my wife Rashmi and mother-in-law Asha Chavan on 17.10.1998 by Pistol. I plead guilty." The learned Additional Sessions Judge, however, had called upon the prosecution to prove the charges by a specific Order, dated 26th September, 2001.

8. As already stated above, the prosecution examined seven witnesses including the doctor, who had conducted the post-mortem as also the persons residing in the neighbourhood of the scene of offence. The testimonies of all these witnesses taken together disclose that the appellant-accused caused death of his wife and his mother-in-law by firing bullets and intentionally caused their death with the help of service Pistol and ammunitions available with him. Both the ladies suffered serious head injuries from the bullets fired at them. The injuries as described in relation to the wife of the appellant in the post-mortem report are as under :-

"1. Fire arm entry wound over left temporal region, 1 cm above and behind left ear.

2. Fire arm wound of exit on right temporal region 2 cm above right ear. Internal injuries corresponding exit injuries. bullet pieces and perforates skin sub-cutaneous tissues at injury no.1. Then bullet further travels right side of skull by making an hole and fracturing left temporal bone, left side occipital bone then piercing meninges left temporal lobe of a brain and right and left petrous part of temporal bone fractured and bullet then further perforates right temporal bone and

comes out of skull by making an hole and fracturing right temporal bone.

2. Brain was perforated with haemorrhage all over the brain. There was a fracture of temporal bone occipital bone and anterior cranial fossa."

The injuries which are described by the doctor on the body of mother-in-law of the appellant-accused are as under :-

1. Fire arm entry wound left side forehead 7 cm above medial end of left eyebrow 1/2 cm left to midline oblique 3 x 2.5 cms margins inverted with 0.2 cm abraded collar surrounding to tattooing or singeing seen. brain matter seen through injury. Blood clots at fractured sites seen, fracture of left side frontal bone.

2. Fire arm entry wound over infraclavicular region, 5 cms left to midline and 1/2 cm. below collar bone left circular 1 cm. diameter margins inverted. No tattooing or singeing seen.

3. Fire arm wound of entry over chest back left side, 14 cm, below shoulder line x 1 cm left to midline, circular 1 cm diameter, margins inverted. No tattooing or singering seen.

4. Fire arm exit wound over left side chest back 1/2 cm x 2 cm margins averted.-

The doctor also noted the following internal injuries:-

1. Bullet pierces and perforates skin, subcutaneous tissues, forming haematoma under skin, bullet further passes making an hole and fracturing left side frontal bone, meninges, then perforates left frontal lobe of brain, left side partial lobe then bullet finally lodged at parietooccipital lobe under bone. There is a fracture of left parietooccipital bone and blood with clots seen at fractured ends of bone. Brain matter sen through injury no.1. The track is lacerated, perforated and haemorrhagic. Bullet is in deformed condition and broken into pieces which

are retrieved and sent to ballistic examination.

2. Bullet pierces and perforates skin, subcutaneous tissue at injury No.1 forming reddish haematoma under skin. Bullet further passes downwards backwards and posteriorily towards chest back injury No.4 by perforating ant. chest wall, muscles left side pleura, left upper lobe of lung then post. chest wall muscles and finally bullet makes an exit through injury No.4. The tract is infiltrated with blood.

3. The bullet pierces and perforates skin, subcutaneous tissue, forming reddish haematoma under skin at injury No.3. Bullet then perforates muscles of post chest wall and lodged in the 4th intercostal space muscles from where one deformed bullet with pieces of bullet over retrieved and sent to ballistic examination surrounding muscles contused and infiltrated with blood.

9. It was clearly opined by the doctor that the

death of the ladies was due to fire arm injuries causing head injury and multiple fractures of skull and all the injuries were antemortem caused by fire arm and sufficient to cause death in ordinary course of nature.

10. The testimony of PW 2 Mr. Hatkar, PW 3 M.L.Singh, PW 4 R.R.Kadam, PW 5 S.B.Mehta and PW 6 S.B.Rane as well as that of PW 7 M.M.Mate, senior Police Inspector, clearly disclose that both the ladies were killed by fire arm i.e. service Pistol by the appellant-accused and, indeed, analysis of their evidence as has been made by the learned Additional Sessions Judge clearly justifies the finding arrived at in that regard by the trial Court and, indeed, no infirmity of whatsoever nature could be pointed out in the said findings arrived at by the Trial Court nor any procedural irregularity could be pointed out nor any fault can be found with the analysis of the evidence by the Trial Court. Added to this, the statement of the appellant-accused recorded under Section 313 of the Code of Criminal Procedure also apparently discloses clear admission of the crime by the appellant-accused and as the law stands today, the said statement, though is not a piece of evidence, can be looked into while analysing the evidence on record. That apart, in the case in hand, there is also admission of the offence in the course of recording the plea of the appellant-accused, and this defence was essentially in terms of Section 84 of the Indian Penal Code.

11. The challenge to the impugned judgment is solely on the ground that the appellant was insane, within the meaning of the said expression under Section 84 of the Indian Penal Code and that the same has been clearly established by the evidence led by the appellant-accused but the same has been totally ignored by the Trial Court.

12. Section 84 of the Indian Penal Code provides that nothing is an offence, which is done by a person who, at the time of doing it, by reason of unsoundness of mind, incapable of knowing the nature of the act, or that he is doing what is either wrong or contrary to law. The Apex Court in case of **DAYABHAI CHHAGANBHAI THAKKAR VS. STATE OF GUJRAT,** reported in AIR 1964 SC 1563, while dealing with the scope of Section 84 of the Indian Penal Code after taking into consideration the law in that regard as is found described in Halsbury's Laws of England, 3rd Edn., Vol.10, page 288, the ruling of the Apex Court in case of **K.M.NANAVATI VS. STATE OF MAHARASHTRA reported in (1962) SUPP (1) SCR 597** as well as decision of Nagpur High Court in case of **RAMHITRAM VS. STATE OF MADHYUA PRADESH (S) reported in AIR 1956 Nagpur 187** and that of the Patna High Court in case of **KAMLA SINGH VS. THE STATE (S) reported in AIR 1955 Patna 209,** held that :-

> The doctrine of burden of proof in the context of the plea of insanity may be stated in the

following propositions : (1) The prosecution must prove beyond reasonable doubt that the accused had committed the offence with the requisite mens rea and the burden of proving that always rests on the prosecution from the beginning to the end of the trial. (2) There is a rebuttable presumption that the accused was not insane, when he committed the crime, in the sense laid down by S. 84 of the Indian Penal Code : the accused may rebut it by placing before the Court all the relevant evidence- oral documentary or circumstantial, but the burden of proof upon him is no higher than that rests upon a party to civil proceedings. (3) Even if the accused was not able to establish conclusively that he was insane at the time he committed the offence, the evidence was placed before the court by the accused or by the prosecution may raise a reasonable doubt in the mind of the court as regards one or more of the ingredients of the offence, including mens rea of the accused in that case the court would be entitled to acquit the accused on the ground that the general burden of proof resting on the prosecution was not discharged.

13. In a resent decision, the Apex Court in the matter of **BAPU ALIAS GUJRAJ SINGH VS. STATE OF**

RAJASTHAN reported in (2007) 8 SCC 66, after taking into consideration the decisions in **Dayabhai's** case (supra) as well as in case of **Sheralli Wali Mohd. Vs. State of Maharashtra reported in (1973) 4 SCC 79,** held :-

> "8. Under Section 84 IPC, a person is exonerated from liability for doing an act on the ground of unsoundness of mind if he, at the time of doing the act, is either incapable of knowing (a) the nature of the act, or (b) that he is doing what is either wrong or contrary to law. The accused is protected not only when, on account of insanity, he was incapable of knowing the nature of the act, but also when he did not know either that the act was wrong or that it was contrary to law, although he might know the nature of the act itself. He is, however,not protected if he knew that what he was doing was wrong, what he was doing was contrary to law even though he did not know that it was wrong. The onus of proving unsoundness of mind is on the accused. But the duty of an honest investigator to subject the accused to a medical examination and place that evidence before the court and if this

> is not done, it creates a serious infirmity in the prosecution case and the benefit of doubt has to be given to the accused. The onus, however, has to be discharged by producing evidence as to the conduct of the accused shortly prior to the offence and his conduct at the time of immediately afterwards, also by evidence of his mental condition and other relevant factors. Every person is presumed to know the natural consequences of his act. Similarly every person is also presumed to know the law. The prosecution has not to establish these facts."

14 It is further ruled that the Section itself provides that the benefit is available only after it is proved that at the time of committing the act, the accused was labouring under such a defect of reason, from disease of the mind, as not to know the nature and quality of the act he was doing, or that even if he did not know it, it was either wrong or contrary to law then this section must be applied. The crucial point of time for deciding whether the benefit of this section should be given or not, is the material time when the offence takes place. It is only unsoundness of mind which naturally impairs the cognitive faculties of the mind that can form a ground of exemption from criminal

responsibility. The law recognizes nothing but incapacity to realise the nature of the act and presumes that where a man's mind or his faculties of ratiocination are sufficiently dim to apprehend what he is doing, he must always be presumed to intend the consequence of the action he takes. Mere absence of motive for a crime, howsoever atrocious it may be cannot in the absence of plea and proof of legal insanity, bring the case within this section.

15. Considering the above decision as regards the scope of Section 84 of the Indian Penal Code and the onus which an accused raising the plea thereunder is required to discharge, if one peruses the evidence led by the prosecution as well as the defence in the case in hand, it is abundantly clear that there is no material on record to disclose any sort of insanity having been suffered by the appellant either at the time of commission of the offence or prior thereto. Undoubtedly, from December, 1998 till March, 1999, the appellant-accused was subjected to medical treatment at J.J.Hospital for chronic paranoid psychosis. However, the appellant has not been able to produce any evidence on record, which could reveal that he was suffering from such illness even prior to December, 1998. Neither the testimony of Dr. Patil PW 2 nor even the medical reports at Exhibit 44 and 44-A could substantiate the claim of the appellant that he was suffering from chronic paranoid psychosis on 17th October, 1998 or any

time prior thereto. It is true that DW 2 Dr. Mrs Patil has referred to findings in the report prepared by the Committee of the Doctors, who had examined the appellant-accused. However, the report does not disclose any supporting document and this fact has been clearly admitted by witness DW 2 during the course of her cross-examination. Undisputedly, Dr. Mrs. Patil had not examined the appellant-accused.

16. It is pertinent to note that the appellant had requested for summons to Dr. Haridas who was one of the members of the Committee that had examined the Appellant-accused and had prepared the Report. The Sessions Court had even granted such application and had issued the summons and had handed over the same to the advocate for the appellant-accused, however, for the reasons undisclosed, the same was never served upon Dr. Haridas and it was returned without being served. Thereafter, it was at the instance of the apellant-accused himself that Dr. Mrs. Patil was sought to be summoned in the matter. It was to the knowledge of the appellant that Dr. Mrs. Patil was not the member of the Committee who had examined the appellant-accused. Even the testimony of Dr. Mrs. Patil discloses the names of the Doctors who were the members of the Committee that had examined the appellant. Even thereafter, there was no attempt to obtain a summons for any of those doctors. It was only

after conclusion of the trial and subsequent to the Judgment imposing the sentence, that such an application came to be filed before this Court for the first time, nearly five years after the conclusion of the trial against the appellant, and the same has already been rejected by reasoned oder. In any case, before the trial Court no attempt on behalf of the appellant-accused was made to summon any of the doctors who had examined the appellant-accused to establish the plea of insanity. This clearly discloses reluctance on the part of the appellant to produce the best evidence to establish his plea of insanity, which justifies adverse inference to be drawn against the appellant.

17. While dealing with the plea of insanity, one cannot forget the plea of guilt, which was recorded in answer to the charge as well as a specific admission made by the appellant in the course of recording of Statement of the appellant-accused under Section 313 of the Code of Criminal Procedure. It is not the case of the appellant that the appellant continued to be insane or was suffering from attacks of paranoid psychosis at the time when he was required to answer the question while recording his statement under Section 313 of the Code of Criminal Procedure. In the background of these facts and considering complete failure on the part of the appellant-accused to prove his plea of insanity, taking into consideration the law laid down by the Apex Court in relation to the onus of proof which rests upon

the appellant-accused when he raises plea of insanity and considering the materials on record, one finds no infirmity in the impugned Judgment and it does not call for any interference.

18. It is also to be noted that the father of the appellant was examined as DW 1, and had clearly admitted in the course of his cross-examination that at no point of time prior to the incident in question, the appellant-accused had taken any psychiatric treatment. The testimonies of any of the prosecution witnesses, who met the appelant-accused immediately after the incident also do not disclose they having noticed any traces of insanity in the behaviour of the appellant. Mere unexpected reaction or unscrupulous behaviour subsequent to the commission of offence by an accused when he might have been in disturbed mood on account of commission of such offence, that by itself cannot lead to conclusion that he was either insane or was not in a position to know the nature and consequences of his act when he committed the offence. Even the medical reports at Exhibit 44 and 44-A nowhere disclose the past history of the appellant being comprised of the behaviour which could reveal the appellant to be a person suffering from chronic paranoid psychosis at the relevant time or earlier thereto nor testimony of the father of the appellant discloses any act of violence having been committed by the appellant at any point of time earlier to the incident in question. In the facts and

circumstances, it cannot be said that there is any evidence on record revealing that the appellant-accused was suffering from any such illness or was unable to know the nature and quality of his act or that what he was doing was wrong and/or contrary to law.

19. It was sought to be argued that the prosecution has failed to establish the motive behind the offence alleged to have been committed by the appellant. The learned advocate appearing for the appellant stated that the testimony of the son of the appellant discloses that the relationship between the appellant and his wife was not cordial. Mere absence of cordial relationship between husband and wife itself cannot lead to conclusion about the motive behind the offence, none-the-less the said point is of no relevance in the case in hand in the circumstances of the case as it is a settled principle of law that mere absence of motive cannot exonerate the accused from the consequences of the wrong committed by him. Voluminous documentary as well as oral evidence on record in addition to the plea of guilt by the accused and admission made by the appellant-accused in his statement recorded under Section 313 of the Code of Criminal Procedure, would not require any additional evidence regarding motive of the accused behind the crime. Being so, the contention which is sought to be raised in this regard is of no relevance.

20 In the result, therefore, the appeal fails and is hereby dismissed.

.....

[A.A.Sayed, J.] **[R.M.S.Khandeparkar,J.]**

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CORAM : Sri R.M.S.Khandeparkar

And

Sri A.A.Sayed,JJ.

DATE : December 6, 2007.

. For the reasons separately recorded in the Judgment, the following order is passed:-

ORDER

"In the result, therefore, the appeal fails and is hereby dismissed."

.....

[A.A.Sayed, J.] **[R.M.S.Khandeparkar,J.]**